

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-CBS

AFFIDAVIT OF DEBORAH S. GRIFFIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
CLAIMS FOR DIRECT PAYMENT

I, Deborah S. Griffin, am an attorney in the Boston office of Holland & Knight LLP and counsel of record for American Manufacturers Mutual Insurance Company ("AMMIC") in this matter. I have personal knowledge of the following, except where stated to be upon information and belief. I make this affidavit in support of Plaintiff's Motion for Partial Summary Judgment as to Claims for Direct Payment.

1. Attached hereto as Exhibit A is a true and accurate copy of a claim for direct payment asserted by Millis Plumbing dated April 9, 2003, in the amount of \$31,505.85. This document was marked as Deposition Exhibit 75 in the deposition of Lee Dore, of the architectural firm of Dore & Whittier.

2. Attached hereto as Exhibit B are true copies of the following pages of the transcript of the deposition of Lee Dore, Project Manager for Dore & Whittier, the project architects on the North Brookfield Junior/Senior High School, and Dore & Whittier's designated 30(b)(6) witness: 1, 6-9 185-190, 193-198.

3. Attached hereto as Exhibit C is a true and accurate copy of a letter to Millis Plumbing, Inc., dated May 7, 2003, produced by the Town in this matter. The author of the

letter, Thomas W. McEnaney, was an attorney representing the Town at the time of the letter.

[Bates no. NB41963-64]

4. Attached hereto as Exhibit D are true copies of the following pages of the transcript of the deposition of James Murray, the Town's witness designated under Fed. R. Civ. P. 30(b)(6): 1, 5, 8-11, 33, 53, 128-132.

5. Attached hereto as Exhibit E is a true copy of Requisition 12 submitted by Sciaba to the Town, which was marked as Deposition Exhibit 70 in the Dore deposition.

6. Attached hereto as Exhibit F is a true copy of Requisition 13A submitted by Sciaba to the Town, which was marked as Deposition Exhibit 72 in the Dore deposition.

7. The Town has not produced any documents indicating that there was any court order barring the payment of Millis Plumbing's claim for direct payment and upon information and belief there was no such order.

8. Attached hereto as Exhibit G is a true copy of the document marked as Exhibit 90 in the deposition of James Murray, co-chair of the Town's School Building Committee and designated 30(b)(6) witness.

9. Attached hereto as Exhibit H is a true copy of the document marked as Exhibit 91 in the deposition of James Murray, co-chair of the Town's School Building Committee and designated 30(b)(6) witness.

10. Attached hereto as Exhibit I is a true copy of a letter dated June 9, 2003, from Mr. McEnaney to me (without its enclosures), indicating that the Town paid \$3,361.81 to Millis Plumbing on May 22, 2003 and \$31,350 to Greenwood Industries on May 21, 2003. [Bates no. AM07001-02]

11. Attached hereto as Exhibit J is a true copy of a Ratification Agreement entered into between AMMIC and Millis Plumbing following Sciaba's default on the project.

12. On or about September 4, 2003, AMMIC made a payment to Millis Plumbing in the amount of \$66,085.33 pursuant to the Ratification Agreement.

13. Attached hereto as Exhibit K is a true copy of the Contract between Sciaba and the Town that was marked as Exhibit 22 in the deposition of Lee Dore and identified in the deposition of James Murray (Exh. D: Murray 33).

14. Attached hereto as Exhibit L is a true copy of the General Conditions of the Contract between Sciaba and the Town that was marked as Exhibit 77 in the deposition of James Murray (Exh. D: Murray 53).

15. Attached hereto as Exhibit M is a true copy of the Supplementary General Conditions of the Contract between Sciaba and the Town that was included in Exhibit 78, identified in the deposition of James Murray (Exh. D: Murray 53).

16. Attached hereto as Exhibit N is a true and accurate copy of a claim for direct payment asserted by Greenwood Industries, Inc., dated April 21, 2003, in the amount of \$137,350.00, produced by the Town. [Bates no. NB38008]

17. Attached hereto as Exhibit O is a true and accurate copy of a letter to Greenwood Industries, Inc., dated May 7, 2003, produced by the Town in this matter. The author of the letter, Thomas W. McEnaney, was an attorney representing the Town at the time of the letter. [Bates no. NB37667-68]

18. Attached hereto as Exhibit P is a true copy of a voucher for a certified check from Sciaba to Greenwood Industries in the amount of \$100,700.49 produced by the Bankruptcy Trustee in of Sciaba's bankruptcy case. Upon information and belief, on or about May 28, 2003,

Sciaba delivered a certified check payable to Greenwood Industries in the amount of \$100,700.49 for work performed on the North Brookfield project.

19. Attached hereto as Exhibit Q is, upon information and belief, a true copy of a fax received by GREYHAWK North America, consultants to AMMIC, in connection with Greenwood Industries' bond claim, in which Greenwood acknowledges receiving a payment from Sciaba in the amount of \$100,700.49 on May 28, 2003.

20. Attached hereto as Exhibit R is a true copy of a Ratification Agreement entered into between AMMIC and Greenwood Industries following Sciaba's default on the project. The amount listed in the Ratification Agreement for payments previously received included both the amount paid by the Town on the direct payment claim and the \$100,700.49 it received from Sciaba.

21. On or about October 21, 2003, AMMIC made a payment to Greenwood Industries in the amount of \$5,300.03 pursuant to the Ratification Agreement.

22. The Town has not produced any documents indicating that there was any court order barring the payment of Millis Plumbing's claim for direct payment and upon information and belief there was no such order.

Signed under the penalties of perjury this 16th day of December, 2005.

/s/ Deborah S. Griffin
Deborah S. Griffin

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